

C. C. Kimball  
General Attorney

 **Chessie System**

Law Department  
Terminal Tower  
P. O. Box 6419  
Cleveland, Ohio 44101  
216 ~~800-2200~~  
623-2416

6-2304010  
AUG 26 1976  
Date .....  
Fee \$ 50  
ICC Washington, D. C.

August 19, 1976

REGISTERED MAIL

RECORDATION NO. 8451 Filed & Recorded

INTERSTATE COMMERCE COMMISSION  
RECEIVED

AUG 26 1976

AUG 26 1976 9 21 AM

Mr. Robert L. Oswald, Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

INTERSTATE COMMERCE COMMISSION

ADMINISTRATIVE SERVICE  
MAIL UNIT

Dear Sir:

Enclosed are executed counterparts Nos. 4, 5 and 6 (of 6) of Agreement dated as of August 15, 1976, between Ortner Freight Car Company, 2652 Erie Avenue, Cincinnati, Ohio 45208 (Bailor) and The Chesapeake and Ohio Railway Company, P. O. Box 6419, Cleveland, Ohio 44101 (Bailee).

The equipment covered by this Agreement consists of:

300 100-ton 2,100 cu. ft. hopper cars to bear the Bailee's road numbers 45000 - 45299, inclusive.

A.A.R. Mechanical Designation: HTS

The above equipment will be lettered "Chessie System", "C&O", or in some other appropriate manner, and will also be marked:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT  
FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20C"

Also enclosed is a draft of The Chesapeake and Ohio Railway Company in the amount of \$50 representing the required recording fee.

Pursuant to the Commission's rules and regulations for the recordation of certain documents under Section 20c of the Interstate Commerce Act, you are hereby requested to duly file two of the enclosed counterparts for record in your office and to return the remaining one to me at my above address.

Very truly yours,

  
C. C. Kimball

The Chesapeake and Ohio Railway Company

The Baltimore and Ohio Railroad Company

# Interstate Commerce Commission

Washington, D.C. 20423

8/26/76

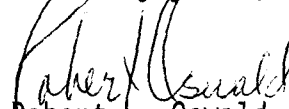
## OFFICE OF THE SECRETARY

- C.C. Kimball  
Chessie System  
Law Dept.  
Terminal Tower  
P.O.Box 6419
- Cleveland, Ohio 44101

Dear Sir:

The enclosed document was recorded pursuant to the provisions of Section 20c of the Interstate Commerce Act, 49 U.S.C. 20c, on **8/26/76** at **9:25am**, and assigned recordation number **8851**

Sincerely yours,

  
Robert L. Oswald  
Secretary

Enclosure

SE-39  
(2/75)

8451  
REGISTRATION NO. ....  
AUG 26 1976 9 21 AM  
INTERSTATE COMMERCE COMMISSION

EXECUTED IN 6 COUNTERPARTS  
OF WHICH THIS IS NO. 5

**AGREEMENT**

Dated as of August 15, 1976

between

ORTNER FREIGHT CAR COMPANY

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

\_\_\_\_\_  
Covering

300 100-Ton 2,100 Cu. Ft. Hopper Cars

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THIS AGREEMENT, dated as of August 15, 1976, by and between ORTNER FREIGHT CAR COMPANY, a Delaware corporation (Manufacturer), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (C&O);

W I T N E S S E T H :

The Manufacturer and C&O heretofore entered into a letter Agreement dated January 14, 1975 (a copy of which letter Agreement is made a part hereof by reference), and such addenda thereto and modifications thereof as may have been or may be agreed upon in writing between the Manufacturer and C&O, whereunder the Manufacturer agreed to construct at its Covington, Kentucky, plant and to deliver to C&O at Cincinnati, Ohio, or at such other point or points as directed by C&O, and C&O agreed to accept and pay for 300 100-ton 2,100 cu. ft. hopper cars to bear C&O road numbers 45000 - 45299, inclusive (Cars).

As contemplated by said letter Agreement, C&O intends to finance the purchase of the Cars from the Manufacturer pursuant to an Equipment Trust Agreement to be dated as of November 1, 1976, but deliveries of the Cars are scheduled to begin on or about August 30, 1976, and C&O will not have established said financing arrangement by that time nor be in position to take such deliveries thereunder. C&O represents that such financing arrangement will be established, however, on or before November 30, 1976. C&O, in order that it may use the Cars pending establishment of such financing arrangement, has arranged with the Manufacturer to give it temporary custody and possession of the Cars upon their completion, solely as a bailee of the Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to C&O and C&O hereby accepts from the Manufacturer the Cars as of the date each of them is delivered to C&O at Cincinnati, Ohio, or such other point or points as may be directed by C&O, for the period ending on the earlier of November 30, 1976, or the date of establishment of said financing arrangement. On such termination date, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Upon delivery of each Car to the delivery point, C&O's representative will execute a certificate of acceptance acknowledging the receipt of delivery of such Car under this Agreement. Title to the Cars shall remain in the Manufacturer and C&O's right and interest therein is and shall be solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of bills of sale. C&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, C&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cars.

C&O agrees that it will permit no liens of any kind to attach to the Cars; and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities of whatsoever kind, and
- (b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Cars or the Manufacturer,

because of the Manufacturer's ownership or because of the use, operation, management or handling of the Cars by C&O during the term of this Agreement. C&O's obligations contained in this paragraph shall survive the termination of this Agreement.

C&O will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Car to C&O under this Agreement it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously stencilled upon each side of each Car, in contemplation of said financing arrangement, the following legend in letters not less than one inch in height:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT  
FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20C"

C&O hereby agrees to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Cars.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Cars, C&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Cars as provided in the letter Agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided,

however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities or any other obligations contained in this Agreement or in the letter Agreement relating to the Cars. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the letter Agreement, and C&O receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by C&O under this Agreement, shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to C&O.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the letter Agreement, the rights of such assignee to such payments as may be assigned together with any other rights hereunder which can be so and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Cars, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to C&O by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by C&O, its successors and assigns only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

C&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to C&O of

the Cars, as contemplated by this Agreement, shall not relieve C&O of its obligation to accept, take and pay for the Cars in accordance with the terms of the letter Agreement, or impair any of the Manufacturer's rights under the letter Agreement.

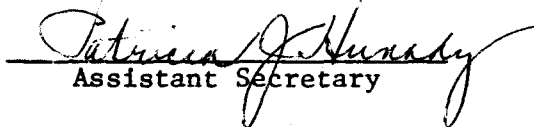
Attest:

  
Assistant Secretary

ORTNER FREIGHT CAR COMPANY

By   
Assistant Vice President


Attest:

  
Assistant Secretary

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

By   
Assistant Vice-President  
and Treasurer

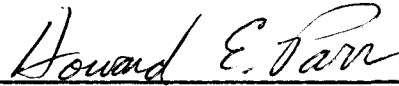
APPROVED AS TO FORM

  
GENERAL ATTORNEY  
8/16/76



STATE OF OHIO       )  
                          ) SS:  
COUNTY OF HAMILTON)

On this 20<sup>th</sup> day of August, 1976, before me personally appeared T. S. COOKE, JR., to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of ORTNER FREIGHT CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public, Hamilton County, Ohio  
My Commission Expires August 12, 1977

STATE OF OHIO       )  
                          ) SS:  
COUNTY OF CUYAHOGA)

On this 16<sup>TH</sup> day of August, 1976, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is Assistant Vice-President and Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



CLARA MASUGA

Notary Public, Cuyahoga County, Ohio  
My Commission Expires April 21, 1979